

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**ORIN JACKSON**

Claimant

VS.

**HANDYMAN CONNECTION**

Respondent (uninsured)

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Docket No. 1,016,176

**ORDER**

Claimant requests review of the August 2, 2004 preliminary hearing Order entered by Administrative Law Judge Robert H. Foerschler.

**ISSUES**

The Administrative Law Judge (ALJ) denied claimant's request for temporary total disability benefits and medical treatment after concluding claimant was an independent contractor rather than an employee.

The claimant requests review of that decision asserting the ALJ erred in finding he was an independent contractor. Rather, claimant contends the evidence supports his claim that he was respondent's employee on the date of his accidental injury.

Respondent, an entity that is admittedly uninsured, argues that the greater weight of the evidence supports the ALJ's finding that claimant was an independent contractor under Kansas Law.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Based on the record compiled to date, the Appeals Board (Board) finds the ALJ's preliminary hearing Order should be reversed.

Handyman Connection is a national franchise owned locally by Chris Kerth. Mr. Kerth testified the company's primary business is providing craftsmen for small to medium size home repair and remodeling projects.<sup>1</sup> Respondent acts as a go-between, soliciting jobs from the public, reviewing the homeowner's financial qualifications and the specifics of the job, and then pairing the job to one of their purported independent contractors. Claimant is one of those independent contractors.

All independent contractors, including claimant are asked to sign an affidavit which disavows any coverage under the Kansas Workers Compensation Act.<sup>2</sup> According to Mr. Kerth, he or one of his office staff goes through a lengthy orientation with each prospective craftsman before the affidavit is signed. After the affidavit is signed, Mr. Kerth says he follows the 20 rules set forth by the IRS so as to preserve the legal integrity of the independent contractor status of those craftsmen. The craftsmen determine when they wish to work and what type of jobs they accept. Based on Mr. Kerth's testimony, it appears that there are a plethora of craftsmen who, when they are so inclined, can come to respondent's place of business and peruse the potential available home repair jobs.<sup>3</sup>

In slight contrast to Mr. Kerth's testimony, claimant testified that he was required to work a minimum of 30 hours each week. He further explained that respondent's office personnel would provide him with appointment times to meet with prospective clients. After reviewing the work to be done, he would contact respondent's business office and convey how much time he believed would be spent completing the project. Respondent's office would then provide a written proposal setting forth a high and low price for the job. Claimant had some discretion to decide the ultimate contract price so long as it was within this range, although he was encouraged to achieve at least a 50% closure rate on these proposals. The homeowner is responsible for the cost of all materials. At the end of the job, the homeowner pays respondent and respondent, in turn, pays claimant or the craftsman 50% of the fee paid to respondent. No taxes are deducted from this fee and if there are any complaints, respondent steps in and mediates the dispute.<sup>4</sup>

After considering all this evidence the ALJ concluded as follows:

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<sup>1</sup> Kerth Depo. at 4-5.

<sup>2</sup> P.H. Trans., Resp. Ex. A at 1.

<sup>3</sup> Kerth Depo. at 12.

<sup>4</sup> *Id.* at 26-27.

The purpose of that relationship obviously include avoidance of liability for employment taxes and workers compensation liability and other financial hazards of the employer-employee situation and it was these benefits for which the parties had bargained.

Little reason can be seen to frustrate the obvious mutual intentions of the parties just because [c]laimant later cut his hand with his own miter saw doing work in Kansas he was personally supervising for the mutual benefit of both parties. So the injury is determined to be non-compensable.<sup>5</sup>

Generally, an independent contractor is someone who contracts to perform a piece of work according to his own methods and without being subject to the control of an employer, except as to the final result.<sup>6</sup> An employer, however, is someone who employs another to perform services in his affairs and who controls or has the right to control the conduct of the other in performing those services.<sup>7</sup> Although there are a number of factors to consider when making this decision, particular emphasis is placed on the employer's right to control the worker.<sup>8</sup>

Based upon the evidence contained within the record thus far, the Board finds the ALJ's Order should be reversed. While it was certainly the intent of the parties, or more specifically that of the respondent, to avoid workers compensation liability, the existence of the written affidavit which disclaims coverage under the Act is not dispositive of the issue.<sup>9</sup>

There are instances where the facts surrounding the parties relationship compel a finding of an independent contractor status.<sup>10</sup> However, the difference between those cases and the one at hand is that respondent's business handles small home repairs, it advertises for small home repairs, and hires people to perform those small home repairs for its customers. The customers pay respondent when the work is done. If there are insufficiencies in the work, respondent acts as a mediator. Respondent may not be present on the job each and every day controlling every aspect of the jobs, but the greater

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<sup>5</sup> ALJ Order (August 2, 2004) at 2.

<sup>6</sup> *Wallis v. Secretary of Kans. Dept. of Human Resources*, 236 Kan. 97, 689 P.2d 787 (1984); *Krug v. Sutton*, 189 Kan. 96, 366 P.2d 798 (1961).

<sup>7</sup> *Falls v. Scott*, 249 Kan. 54, 815 P.2d 1104 (1991); *Russell v. H & K Delivery*, No. 192, 809, 1998 WL 462620 (Kan. WCAB July 24, 1998).

<sup>8</sup> *Hartford Underwriters Ins. Co. v. Kansas Dept. of Human Resources*, 272 Kan. 265, 32 P.3d 1146 (2001).

<sup>9</sup> *Casebeer v. Casebeer*, 199 Kan. 806, 433 P.2d 399 (1967).

<sup>10</sup> See e.g., *Yingling v. LCA, Inc.*, No. 1,014,862, 2004 WL 1067490 (Kan. WCAB Apr. 15, 2004).

weight of the evidence compels the conclusion that claimant is an employee in spite of respondent's contentions to the contrary.

Accordingly, the ALJ's Order is reversed and the claimant's claim is found to be compensable.

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Robert H. Foerschler dated August 2, 2004, is reversed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of September 2004.

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BOARD MEMBER

c: Mark E. Kolich, Attorney for Claimant  
Samantha N. Benjamin, Attorney for Respondent  
Robert H. Foerschler , Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director